

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IBEW LOCAL UNION 102 WELFARE
FUND, et al.,

Plaintiffs,

v.

WILLIAM VINCENT a/k/a BILL
VINCENT, and PROFESSIONAL
INSURANCE CONCEPTS,

Defendants.

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Civil Action No. 10-5828 (SRC)

OPINION & ORDER

CHESLER, District Judge

This matter comes before the Court on Defendants motion to dismiss for failure to state a claim and for lack of subject matter jurisdiction [docket entry no. 7]. The Court has considered the papers filed by the parties and rules on the written submissions and without oral argument, pursuant to Federal Rule of Civil Procedure 78. For the reasons that follow, the Court will grant the motion to dismiss.

Plaintiffs oppose the application, asserting that their claim arises under ERISA's enforcement provisions since Plaintiffs are an ERISA benefit plan and its trustees, while Defendants are service providers to Plaintiffs. Plaintiffs contend in their opposition papers that the Complaint set forth a cause of action for breach of fiduciary duties under Title 29 U.S.C. §1132(e)(2). Unfortunately, as Defendants correctly point out, the Complaint alleges no facts which support an ERISA fiduciary claim as required under *Bell Atlantic Corp. v. Twombly*, 127

S.Ct. 1955 (2007) and *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009).

Defendants are also correct that there is not even a colorable demonstration that jurisdiction under the Labor Management Relations Act (“LMRA”) exists, or that the ERISA plan can sue Defendants as beneficiaries of the plan.

The Complaint is dismissed without prejudice. Plaintiffs are given leave to submit an amended Complaint properly setting forth factual support for their claims and subject matter jurisdiction within 14 days of the date of entry of this order.¹

For these reasons,

IT IS on this 4th day of May, 2011,

ORDERED that Defendants’ motion to dismiss [docket entry no. 7] is **GRANTED**; and it is further

ORDERED that Plaintiffs are granted leave to amend their Complaint within 14 days of the date of entry of this Opinion and Order.

s/Stanley R. Chesler
STANLEY R. CHESLER
United States District Judge

¹The Court is extremely dubious that a claim for ERISA benefits or under the LMRA is even potentially viable and counsel is reminded of the grounds of Federal Rule of Civil Procedure 11 for sanctions.